

Fidelity Supprels'd and Prosecuted:

OR,

An Account of the illegal Commitment and Prosecution of George Everett, and John Sartain:

Most humbly offer'd to the Consideration of the Lords Spiritual and Temporal, and Commons of *England*, assembled in Parliament.
To whom they Appeal for JUSTICE.

WHEN Criminals shall invade and dispence with Law, and Partiality rule without controle, then must Innocency undergo the dreadful Effects of malicious Prosecutions, and Criminals be protected and crowned with Reeths of Honour; which being our present Case, in hopes our innocency may prove our advocate, we most humbly set forth,
That being aprized of great Imbezlements made of His Majesties Naval Stores (and encourag'd by His Royal Proclamation of *August 1693.*) having obtain'd Warrants of the Commissioners of the Navy in the year 95. altho the said Commissioners told us, that they had granted several and had not received any returns; (yet notwithstanding many great Obstructions and no Protection.) in 3 months time we made 130 several seizures, of Anchors, Cables, Cordage, Timber, Ordnance, Ammunition, &c. insomuch that their Honors declared they did believe *all the Merchants Ships were fitted out of the Kings Stores*: and altho the said Commissioners directed Mr. *Whitaker*, Solicitor to the Admiralty and Navy Boards, to Prosecute the Offenders, (as by many Letters under their own Hands we can prove they did,) and that 14 of them were Indicted at *Hicks's Hall* in *July 95.* and many others at other times and places; yet by his dillatory and illegal Proceedings, and ill treatment of the Witnesses, by sending them on sham Errands, brow-beating, and threatening to beat them, refusing to pay them for attending His Majesties Courts of Justice, &c. their was but 4 of the Offenders tryed, 2 of which (to clear their Bail) brought on their Tryals at their own charge. and pleaded Guilty; the third, a great Offender, (whose Tryal being deferr'd 2 years) was acquitted, by reason of a sham Breviate prepar'd for the Council, and the want of some Evidence therupon, but promised to make a Report to the Lords of the Admiralty; but we never could obtain a Copy or understand the purport thereof, whereby we were oblig'd to submit to his stifling those Prosecutions; which was a great detriment to us, in regard the Commissioners of the Navy (contemning the Kings Proclamation) did refuse to pay the Reward promised thereby, until the Offenders were convicted: For which reason, and for want of fresh Warrants, which (to prevent further Discoveries) they refused to grant; with divers other great Obstructions and Disappointments from the Admiralty and Navy Boards, and their Solicitor, we were obliged to decline that Service; whereby the Naval Stores lay open to the Imbezlers and Purloyners thereof.

Your Appellants being encourag'd by one Act of Parliament made *Anno Nono & Decimo* of his present Majesty, Entituled, *An Act for the better preventing the Imbezlement of his Majesties Stores of VVar, &c.* having since the 20th. of *August* last made several Discoveries of Naval Stores with the Kings mark thereon, did, in the beginning of *September* following, Indict *Andrew VVay* and others (upon the said Act at *Hicks's Hall*, who by a *Bench Warrant* were Bound to answer the premisses, and your Appellants intending to Prosecute that Service to effect, and thereby prevent the like Abuses for the future, *Sartain* solicited the Commissioners of the Navy for their Warrant to search for such Stores imbezled; which they refusing to grant, he attended the Lords of the Admiralty, and gave them an account upon Oath of the several Discoveries then made; whereupon their Lordships promised him great Reward and Incuragement, advising him to be private and strengthen his Evidence, and by his Discoveries before the Commissioners of the Navy, and they would direct them to Prosecute the Offenders.
Pursuant thereunto an Account thereof was given to the said Commissioners, (upon Oath) who directed Mr. *Whitaker* to Prosecute the Offenders; but by reason the said Act was dubious (as he pretended) a considerable time was spent in advising with the Kings Council, and after several Conferences thereupon, the said Commissioners directed their Warrants to His Majesty's Peace Officers, to carry the said Offenders before them or some other Justice of the Peace, to be dealt with according to Law. Whereupon (by the vigilance of your Appellants) near 20 of the Offenders were carry'd before the said Commissioners, instead of Proceeding against them they Brow-beat your Appellants for troubling their Honors with such matters, and discharged the Persons offending without taking notice of the fact; which being notified to other Justices, they refused to meddle therein; whereby we were obliged to wave those Prosecutions until we had tryed the Issue of those Indicted, as aforesaid: and when those Indictments were to be Tryed, Mr. *Whitaker* advised us that they were defective; whereby they were quash'd, and we preferr'd by him against 2 of the Offenders, viz. *Ratcliffe* and *Scott*; and when they were to be Try'd, the Court was of opinion that they had not Power (by the said Act) to Try the same, whereby they were discharged: but how the Prosecution against *VVay* came to be stifled we know not, neither could we perswade Mr. *Whitaker* to give us any Reason for it. After we desired Mr. *Whitaker* to Prosecute the Offenders by Information in the *Crown Office*, but he alledged that was not a proper place, adding that the said Act was defective, and that he would take care it should be mended the next Session of Parliament, for which purpose he was preparing a Bill, and in the mean time he would Indict them at *Hicks's Hall* for Trespasses, Misdemeanors, and after they were Convicted, he would Sue for the Penalty in one of His Majesties Courts at *Westminster*. Nothing being done therein, and we being urgent to carry on the Prosecutions, did attend him before the Sessions of the *County* began (in *January* last) and then he told us that he would Prosecute all Offenders within the Jurisdiction of the *County*, in that Court the next Sessions, and the others at the *Affizes*, (acquainting us that the Kings Council had advised him that Quarter Sessions was not a proper place,) directing us to give him a List of all Discoveries above 20 s. value, adding, that smaller matters should be referr'd to the Commissioners of the Navy, in regard the Prosecuting such would be lookt upon

in Court as vexatious and oppressive to the Subject. Pursuant thereunto we did forthwith return him a List of all and every Discovery above the value of 20 s. after which he told Sartain that the Old Baily was not a proper Court to sue in (upon that Act) but he would Prosecute them above the next Term, viz. Hillary Term, directing him then to attend him; but instead thereof, by a misrepresentation to the King, His Order was procured for our Prosecution, and by Vertue of the Recorders VVarrant, directed to His Majesties Officers of the Peace, (being as followeth) we were both taken and committed to Prison.

W Hereas it appears unto me, That John Sartain and Geo. Everett have procured VVarrants from the Commissioners of the Navy, on pretence of detecting Abuses that had been committed in Imbezling Naval Stores, and that instead of bringing such Offenders to Justice, they the said John Sartain and Geo. Everett, took Moneys and compounded with such Offenders not to Prosecute them for the same, contrary to the Laws in such Case made and provided, and to the evil Example of others in the like case offending.

These are therefore in his Majesty's Name, Strictly to charge and command You, or some or one of You, upon sight hereof, to apprehend the Bodies of the said John Sartain and Geo. Everett, of whom you shall have notice, and bring them before me or some other of his Majesty's Justices of the Peace near where they shall be taken, to the End they may be Examined touching the Premises, and further dealt withal according to Law; and for so doing this shall be your VVarrant. Dated the 20th. of January 1698.

IN Answer to which we do averr, That since the year 95, we have not procured any VVarrant or VVarrants from the Commissioners of the Navy or any other Person, to search for Imbezled Stores, neither been privy to any VVarrant produced or granted or pretended to be granted by them for that purpose, neither have directly or indirectly compounded with any Person in whose custody any such Stores have been found, not to Prosecute them, neither been privy to the taking any Sum or Sums of Money to stifle any Prosecution; but do confess, we did receive some small Sums of Money, but to no other purpose than really and bona fide, to use the same as a convincing Evidence of the Offenders Guilt, (having Precedents for so doing,) or to allow them some short time to produce (as they pretended they could) such Certificates as the said Act directs; besides, Returning the Offenders with their Offences to the Commissioners of the Navy and their Solicitor, is a demonstrable Evidence that we did not design to stifle any Prosecutions.

And being, as aforesaid, advised by Mr. VVhitaker that the said Act was defective, as also by his Son Mr. Edward VVhitaker, a Counsellour, that the same was a simple, blind, obscure Act that no body understood, we have declined making any further Discoveries of that kind, since the 19th. of October last, and for the same with the foregoing Reasons, not having had the benefit of the Assizes before March last, we have not yet convicted any Offenders, neither hath any Person been yet convicted by vertue of the said Act, altho several are now Indicted in order thereunto.

But to effect our Ruin, our Enemies having obtain'd His Majesty's Order, with the Recorders VVarrant, as aforesaid, your Appellant Everett was taken up by a Constable the 21st. of January last, and carried before Sir John Houlton, who would not examine or hear what he had to offer in his defence, as the VVarrant directs, but by the privat solicitation of one Benner, a Servant to Mr. VVhitaker, committed him to the Compter, refusing to take Bail, which was then offered. On the 22d. of the said month being Sunday, your Appellant Sartain was taken at the Church Door by the said Benner only, who carried him to a Publick House and sent for a Constable, who being dubious in executing the said warrant that day, the said Benner did fallly insinuate that he was the Kings Messenger and had the Kings VVarrant to apprehend him, and to colour his false pretensions did produce something in imitation of a Broad Seal (but did not shew them what it concern'd) whereby the said Sartain was carried before one Justice Bareman, who ordered him with the Constable to withdraw, and after a long conference between the said Justice and Benner, your appellant being called in, the Justice (refusing to examine or hear him) told him he must commit him, (being informed your Appellant Everett was committed for the same offence) unless he had Bayl, which he having not ready, desired his VVorship to grant him a short time to produce, which he refusing, your Appellant desired that he might be sent to some other Prison rather than to Newgate, which being a Prison for Criminals might blast his Reputation; but the said Benner interposing, told his VVorship he must send him to Newgate, he being ordered to carry him thither, which accordingly he effected. After this, viz. the 24th. of the said month, we were exposed in the Post-Boy, as if we had been the greatest Criminals in the whole Kingdom; and on the 26th. of the said month we were both summoned for the same offence, on the Penalty of 100l. to make our Personal Appearance the Monday following, being the 30th. of January, at the Kings-Bench Barr, to answer an Information in the Crown Office for certain Trespases, Contempts and Misdemeanors; to which we appeared by our Attorney, altho no Information then was nor yet is filed against us.

The said Everett (after served with a Subpoena) did by his Advocate acquaint Sir John Houlton thereof (as he was a Justice of Peace) praying to be discharged, in order to attend the said Court and avoid the Penalty; in answer thereunto, he advised him to attend at the Admiralty Board, alledging that he was but one; who pursuant thereunto attending their Lordships, they referr'd him to Mr. VVhitaker, who told another Person my Tryal was deferred to keep me out of the way; for which reason no farther application was made to Mr. VVhitaker. Thus continued in Prison and forsaken of Friends, who were threatened with the same Fate if they did assist me, at length I was released upon Bail: afterwards attending his VVorship for a Copy of the Bail piece, I mov'd to have a Hearing at the Admiralty Board touching the matter whereof I was accused, but he told me it would not be admitted in regard they had referred the same to Mr. VVhitaker, adding, that he was sorry that they brought me before him. But having receiv'd a Copy of what I am bound (by my Friends) to perform, conceiving it to be a great novelty (their Names excepted) I have incerted a copy thereof, as followeth;

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A. B. & C. D. Bound in 100l. each, That George Everard shall appear at the Sessions of the Peace, or at the Old-Baily, Kings-Bench, or the Exchequer Court, to Answer to such Accusations or Informations as shall be brought against him in the Kings Name or otherwise.

This being so natural a resemblance of the whole Proceedings against us, I do most humbly take leave to make some Observations upon it. First to the Date, which varies one month from the real time: secondly, to my Appearance at the Sessions, (which is generally held all over England & Wales,) without assigning either time or place: thirdly, the various motion in attending 3 other Courts held in several places: fourthly, to answer the King and all others, as well for what is to come as what is past; whereby I humbly conceive my Friends bound at once, not knowing to whom, (without either Law or Precedent) to an impossibility of answering what I do not, nor never shall know, during my Life, without having occasion for other Bail in any other Cause; which, I humbly conceive, was imposed on my Bail to prevent their intention of effecting my Liberty.

Thus being you to play a game at Legerdmain which we understand not, there being one Term, one Sessions, and one Assizes past, since we were committed, and nothing charged against us in any Court, it is very hard on our part that we should be exposed and blasted in our Reputations, Imprisoned amongst Criminals and the worst of Malefactors, and bound to spend our time and substance to answer we know not what nor when, and this by the procurement of a mercenary and arbitrary People, (who have almost ruined the Government by their profused Extravagancy and unparrated Practises,) designing thereby to prevent us in detecting Abuses, and proving what hath been most humbly offered to the Honorable House of Commons by your appellant Everett, part whereof upon his Discoveries, (by reason of his confinement) hath been already prov'd by other hands.

Your Appellants conceiving the management of their Prosecutions is referred to the said Mr. Whitaker, most humbly take leave to represent, that about 3 years since several Prosecutions were awarded by the Lords of the Admiralty against an Offender, for committing many notorious Frauds in the affairs of the Navy; the said Mr. Whitaker being directed to prosecute the same, he by collusion or other underhand Dealings, (after some progress made therein, and much money spent on the Kings part) stifled those Prosecutions, to the great detriment of the King and waste of the Publick Treasure. Since which another complaint hath been made to their Lordships against the same person, for committing many other illegal Practises in the affairs of the Navy, to the great detriment of His Majesty and the Publick, as aforesaid; for which their Lordships ordered

Mr. Whitaker to Prosecute the Offender, but instead thereof, by reason of some yet secret contrivance, the Prosecution is delay'd, and one Person nearly ally'd and concerned in the Offences, is preferred into a good Station in His Majesty's Service.

That the said Mr. Whitaker by delaying such Prosecutions, hath obstructed His Majesty's Service, and wasted the Publick Treasure, and by his perfidions and treacherous Dealings, b-trayed & ensared other Prosecutors into Errors, and then Prosecuted them for hiding Prosecutions. These and many illegal Practises, too many here to enumerate, hath been frequently committed by him; whereby it is evident, that he being the Solicitor for managing Prosecutions relating to the Affairs of the Navy, is the alone Person that hath, doth, or can Stifle or Compound such Prosecutions. And if his Servant by sham pretences shall influence & direct Justices of the Peace, to commit Persons to Prison contrary to Law, how far may the Master prevail with the superiour Magistrates, he having the Kings Purse at command? being supported by our potent Adversaries, who by their arbitrary & illegal Practises have Ruined many Persons for detecting Frauds and Abuses committed in this Government, whose Proceedings against us (as we conceive) is contrary to the known Laws of this Kingdom.

As by the 29th. of *Magna Charta*, No Freeman shall be taken Imprisoned, Disseized, Outlawed, Exiled, or otherwise Destroyed or Condemned, without Tryal by his Peers or the Laws of the Land; Justice or Right shall not be sold, denied, or deferred to any. — 29. *Edm. 3. Stat. 5. chap. 4.* None shall be Apprehended upon Petition or suggestion made to the King or His Council, unless by Indictment or Presentment of Lawful Men, or by Process at the Common-Law. — *Stat. 42. Edm. 3.* No Man shall be put to answer an Accusation without Presentment, or some matter of Record, and what is done otherwise shall be void and holden for Error. — *Stat. 2. Edw. 3. c. 8.* No Commands shall be made under the great or little Seal, to disturb or delay Common Right, and the Justices shall proceed to do Right notwithstanding such Commands. — *Stat. 29. Eliz. chap. 5.* If any shall be Sued upon any Penal Law in the Kings-Bench, Common-Pleas, or Exchequer, where such Person is Baylable by Law, or may appear by Attorney, the Person so Sued shall and may at the day contained in the first Process appear by Attorney to defend the same, and shall not be urged to Personal Appearance, or put in Bayl to answer the same, any former Law, Custom, or Usage to the contrary notwithstanding. — *Stat. 13. Car. 2. c. 2.* None Arrested by Prozesse out of the Kings Bench or Common-Pleas; in which Process the true cause of Action is not express'd, and for which the Defendant is Baylable by the 23. *Hen. 6. c. 10.* shall be forced to enter into Bond with Sureties for Appearance, in any Sum exceeding 40 l. which Bond after Appearance entred by Attorney, shall be discharged.

Whereby we humbly conceive, That we ought not to have been Prosecuted, Imprisoned, and held to Bayl, as before recited: and altho the Proceedings against us (as we are inform'd) is contrary to the Establish'd Laws of this Kingdom, yet we cannot expect Relief but by application to this most August and Honorable Assembly; for notwithstanding your Appellant Everett (the 26th. of January last) did present his Petition and Affidavit to His Majesty in Council, in order to prove his Innocency in this matter, he cannot yet prevail with the Clerks of the Council to Read the same.

And altho the Crimes whereof we are accused are manifestly False, yet being refered to the pleasure of the said Mr. Whitaker (who having the liberty in this, as in other cases, to expend or charge the Government with Bills of 11, 12, or 1400l. for carrying on such single Prosecutions, and thereby gain to himself immense Sums of Money; he being a Person of corrupt Principles, &c.

We must expect to be plunged into all the misfortunes that Malice or private Mischief can invent, unless protected by this most Honorable Assembly.

By what hath been most humbly offer'd, we hope 'twill appear, (as true it is) That those Prosecutions laid to our charge, have been stop'd by the Commissioners of the Navy and Mr. Whitaker, who by a secret Contrivance, to prevent us in carrying on those Prosecutions, and other Services, have turned the Die upon us, whereby they, with the Offenders, are become our Prosecutors; which we humbly conceive is contrary to the Constitution of this Government, forasmuch as we have used our utmost Endeavours to Prosecute the Offenders, by exhibiting Informations to the Commissioners of the Navy, and preferring Indictments against them; for which, we conceive, we ought to have the priority in Prosecuting, (being yet within the year,) and then if they or any other Person can charge us of doing any unlawful Act, either in prejudice to the King or Subject, that then they may proceed against us according to the utmost severity of the Law.

And being apprehensive of being Prosecuted in the interval of Parliament, (being surrounded with many powerful Adversaries, who if possible will turn the true course of the Law, to our prejudice,) and being doubtful of great Hardships, by reason the Kings Bench Court is tyed to one single Issue, and therefore cannot enquire into the bottom of this matter, besides the great Expence of Defending such a Prosecution, maintain'd at the Publick Charge, which, by reason of the extensiveness thereof, may in one degree or other effect our Ruin; which to prevent, we do most humbly make our Appeal to this most Honorable and high Court of Parliament, most humbly praying, That we may be admitted a Hearing in such manner as this high Court shall think most fit, which if we can but obtain that favour, we doubt not but to make our Innocency appear, and gain Repute thereby.

Your Appellant Everett observing great Abuses and Enormities committed in the Government, supposing that the administrators of the Publick Affairs (in service to his Majesty and the Government) would have suppress'd the same, did make Proposals to serve the Government and save the Publick Treasure; but instead of Incouragement, I was frequently delayed, deluded, and brow-beaten, and at length reported to be a Madman, as well I deserved, for attending them who have Ruin'd many Persons for detecting Frauds, and whose design (as by dear bought Experience I have since found,) was to destroy rather than save the Publick Treasure, and to Ruin rather than Incourage those that discover Publick Frauds and make Proposals to Redress the same. For altho the Lords of the Admiralty, and Commissioners of the Navy, &c. did promise me Encouragement, (as frequently in the Gazette they have done others) yet they had no such intention, it being apparent, that those Advertisements are design'd to amuse and ensare the Discoverers, rather than punish Offenders, as may be instanced in several Cases, it being manifest, that many Persons has been Ruin'd, but none Rewarded or Encouraged by them for discovering Publick Frauds and Abuses; for instead of punishing Offenders, they have Protected and Preferred them, and Prosecuted and Scandalized their accusers: and had they been (as then I vainly imagin'd) qualify'd for so great a Trust, my Proposals had been Encourag'd, with a great Benefit to the Kingdom, and my Integrity rewarded rather than censured with the scandalous Name of a Madman; which is no other than the real effects of Prejudice imposed on me, to bring me into Disgrace with the King & Parliament, and thereby prevent my discovering their offences.

Whereby it is manifest, that for our Integrity in promoting the Publick Interest, we have offended the Publick Enemies; who being incens'd against us for our Fidelity, have and do contrive our Ruin, whereby we have been blasted in our Reputations, our Lives endanger'd by violent attempts, our Persons threatned with terrible & shameful Punishments, whilst they and their Agents boast of Security, by their great Interest & Riches at Court.

To conclude, If Persons in Publick Trust shall (in the face of the High Court of Parliament) presume to Prosecute (contrary to Law) those who in service to the Government detect Publick Frauds, what may be expected from them in the interval of Parliament, or who shall presume to put the Laws in execution by detecting Publick Offenders, if those who ought to Protect and Encourage, shall publicly Ruin them (as they have others) for doing their Duty; of which there are many sad instances, which, if not prevented, it consequently follows, That those who violate the Law and waste the Publick Treasure, shall be Encouraged and Protected, whereby the Nation will be miserably Destroyed, and the Laws that should support it, rendered of no Effect, and the design of all that is Good thereby defeated, and this once so flourishing a Kingdom, become most Miserable, unless timely relieved by the Wisdom of this most August and Honorable Assembly.

April 19.
1699.

George Everett,
John Sartain: